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No. 36

In the Supreme Court of the United States

OCTOBER TERM, 1941

J. E. PIERCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	10
Argument:	
I. The evidence was sufficient to support the verdict on each of the counts	13
II. The trial court properly refused the instruction requested by the petitioner	22
III. The indictment described the offenses with sufficient certainty	34
Conclusion	35

CITATIONS

Cases:	
Claassen v. *United States*, 142 U. S. 140	21
Clallam County v. *United States*, 263 U. S. 341	28
Delaney v. *United States*, 263 U. S. 586	15
Elliott v. *Hudspeth*, 110 F. (2d) 389	30
Emergency Fleet Corporation v. *Western Union Telegraph Co.*, 275 U. S. 415	28, 31
Evans v. *United States*, 153 U. S. 584	21
Federal Trade Commission v. *Education Society*, 302 U. S. 112	17
Garrison v. *Hudspeth*, 108 F. (2d) 733	34
Heskett v. *United States*, 58 F. (2d) 987, certiorari denied, 287 U. S. 643	34
Keifer & Keifer v. *Reconstruction Finance Corporation*, 97 F. (2) 812	28
King v. *United States*, 279 Fed. 103	34
Lamar v. *United States*, 241 U. S. 103	22, 29, 34
Langer v. *United States*, 76 F. (2d) 817	28
Littell v. *United States*, 169 Fed. 620	26
Pierce v. *United States*, 86 F. (2d) 949	3
United States v. *Ballard*, 118 Fed. 757	26
United States v. *Barnow*, 239 U. S. 74	12, 13, 21, 22, 27, 29, 30, 31
United States ex rel. Skinner & Eddy Corp. v. *McCarl*, 275 U. S. 1	28

Cases—Continued. Page

United States v. *Pierce*, 13 F. Supp. 301 ... 3

United States v. *Skinner & Eddy Corp.*, 28 F. (2d) 373 ... 28

United States v. *Strang*, 254 U. S. 491 ... 28, 31

United States v. *Walter* 263 U. S. 15 ... 28, 31

United States Grain Corp. v. *Phillips*, 261 U. S. 106 ... 28

Statutes:

Criminal Code (U. S. C., Title 18, Sec. 76) Sec. 32, amended by Act of February 28, 1938 (52 Stat. 82) ... 2, 3, 12, 25, 31

Post Roads Act (14 Stat. 221; U. S. C., Title 27, Sec. 3) ... 28

Miscellaneous:

15 Cong. Rec. 2256 ... 26

81 Cong. Rec.:

P. 2252 ... 33

Pp. 2264–2265 ... 33

P. 8378 ... 33

H. Rep. No. 1763 ... 33

S. Rep. 823 ... 33

Lilienthal and Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 Harv. L. Rev. 545 (1941) ... 28

Pinney, *The Legal Status of Federal Government Corporations*, 27 Col. L. Rev. 712 (1939) ... 28

4 Oberholtzer, *A History of the United States since the Civil War*, vol. IV, p. 354 ... 26

Stoke, *Some Aspects of the Legal Status of Federal Corporations*, 27 Geo. L. J. 1 (1938) ... 28

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 345–349) is reported at 115 F. (2d) 399.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 15, 1940 (R. 345), and a petition for rehearing was denied February 4, 1941 (R. 349). The petition for a writ of certiorari was filed March 11, 1941, and was granted April 14, 1941. The jurisdiction of this Court is conferred under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also

Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict on each count.

2. Whether it was reversible error for the trial court to have refused petitioner's requested instruction to the effect that falsely pretending to be an officer or employee of the Tennessee Valley Authority would in no circumstances constitute a false impersonation of an officer or employee of the United States or of a department thereof prohibited by Section 32 of the Criminal Code as it stood in 1935.

3. A question raised by petitioner but not argued in its brief is whether the indictment sufficiently charges the offenses for which petitioner was convicted.

STATUTE INVOLVED

In 1935, when the offenses alleged in the indictment occurred, Section 32 of the Criminal Code (U. S. C., Title 18, Section 76) provided:

> Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the

> United States, or any department or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

By an Act of February 28, 1938 (52 Stat. 82), the Section was amended by the addition of the phrase "or under the authority of any corporation owned or controlled by the United States" after the words "Government thereof" at the two places in which they appeared.

STATEMENT

Petitioner and one Roach were indicted in 1935 in the District Court for the Western District of Tennessee on twenty-one counts, twenty of which charged violations of Section 32 of the Criminal Code and one of which charged conspiracy to violate that Section. Both were convicted on seventeen of the substantive counts. A motion for a new trial was denied. *United States* v. *Pierce*, 13 F. Supp. 301. The judgment was reversed by the Circuit Court of Appeals for the Sixth Circuit on the ground that misconduct of the prosecutor had prejudiced the petitioner. *Pierce* v. *United States*, 86 F. (2d) 949. At the second trial Roach was acquitted, and the jury was unable to agree as to the petitioner.

At the third trial petitioner was convicted on fifteen of the counts (R. 11–13). Eight of these (2, 4, 9, 11, 14, 16, 18, and 20) alleged that during

May and June 1935 the petitioner and Roach, with intent to defraud eight named individuals, did "falsely assume and pretend to be officers of the United States, to-wit, representatives of the Government selling T. V. A. Units, and * * * did * * * take upon themselves to act as such officers." The remaining seven counts (5, 10, 12, 15, 17, 19, and 21) charged that the petitioner and Roach, while falsely pretending to be such officers, obtained from seven of these individuals sums ranging from $10 to $25 (R. 1–11).

The fifteen counts were divided into groups of five for purposes of the sentence (R. 13–14). A sentence of three years' imprisonment was imposed upon each of counts 2, 4, 5, 9, and 10, to run concurrently. A sentence of three years' imprisonment likewise was imposed on each of counts 11, 12, 14, 15, and 16, to run concurrently with each other, but consecutively to the sentence on the first group of counts. A sentence of two years' imprisonment was imposed on each of counts 17, 18, 19, 20, and 21, to run concurrently with each other, but consecutively to the other sentences, thus making a total period of eight years' imprisonment. In addition, a fine of $250 was imposed upon each of the fifteen counts (R. 13–14). On appeal, the Circuit Court of Appeals for the Sixth Circuit affirmed the judgment (R. 349).

The Government's proof at the trial consisted of the testimony of the eight persons named in the indictment who had been approached by petitioner,

as well as that of ten other persons who had heard the petitioner's "sales talk" on one or more occasions. The petitioner took the stand himself, and called sixteen other witnesses who had heard his conversations with prospects at or about the times specified in the indictment. The testimony was conflicting, and, as would be expected, the witnesses, for the most part, could not always recount with positiveness the precise words used by the petitioner in 1935. But there was substantial evidence showing the following facts:

The transactions covered by the indictment occurred in Gibson County, in Western Tennessee, during May and June of 1935, when petitioner was the editor and vice president of the Huntsville (Alabama) Daily Register (R. 135).[1] They occurred in the course of a "community publicity advertising" compaign which the petitioner had been conducting since 1933 in Alabama, Mississippi, and Tennessee, and which he had resumed in Arkansas by the time of the third trial in 1939 (R. 139, 155–156, 257).[2]

Upon entering a new county, petitioner would hire a resident of the locality as a guide and as a

[1] The Huntsville Daily Register was a small newspaper, organized in 1931. All of the common stock and some of the preferred stock of Register Publishing Company were owned by the petitioner and his family (R. 171). No one else attended stockholders' meetings (R. 172).

[2] Roach, who was acquitted at the second trial, began to assist the petitioner in August 1934, and was working for him again in Arkansas in 1939 (R. 258, 267).

source of information concerning persons whom he might wish to approach (R. 152, 166–167, 217, 222, 223, 227, 235, 250, 257, 259, 260). In Gibson County he hired first R. E. Ross and then Reau Graves for this purpose (R. 37, 215, 260, 262). Armed with the data supplied by his guides, the petitioner would greet his prospects by their first or nicknames, and compliment them on their farms and homes (R. 24, 38, 43, 66, 73, 84, 91, 101, 108, 112, 116, 131, 255, 278–279). Speaking very hurriedly (R. 27, 70, 73, 110–111), he would then launch into a sales talk which was substantially the same on the occasions involved (R. 244, 252, 259, 268, 269, 279–280). He would say that he was representing the "Government" or the "Federal Government" (R. 38–40, 43–44, 47–48, 50, 73, 76, 78, 81, 91, 96, 101, 106–107, 108, 113, 116, 118, 131) or, in a few instances, "the TVA" or it and the "Government" (R. 31–33, 43, 59, 72, 84, 120–121), and that he was selling "TVA units" at $10 each (R. 44, 48, 52, 58, 59, 66, 76–77, 82, 84, 91, 96, 101, 102, 104, 106–107, 112, 113, 121, 131. See R. 25–26, 38.). The exact nature of these "TVA units" was not disclosed, but petitioner indicated that if enough of them were sold the advent of cheap electric power would be hastened (R. 24, 31, 32, 38, 44, 52, 58, 59, 66, 73, 74, 81, 92, 108, 112, 114, 116, 118, 120). He explained that the Government would match, dollar for dollar, the contributions which the citizens of the county made (R. 24, 27, 31, 44, 54–55, 59, 66, 69, 74, 77, 81, 107, 116, 120). Sometimes

he would add to the impression that he was a Government representative by remarking that he and President Roosevelt had been schoolmates together and were good friends (R. 24–25, 31, 74, 101, 110, 117, 131). On at least three occasions he stated that he was required to make daily reports to Washington (R. 25, 61, 132).

There had been considerable discussion of the TVA in the region for some time preceding petitioner's arrival (R. 78, 84), and this circumstance combined with the petitioner's representations to produce the impression that he was an advance Government official preparing the way for the speedy extension of TVA power to these communities (See R. 47, 70, 78, 84, 98–99, 108, 112, 120–121, 124). Since the residents of the section appear to have been favorably disposed to the project (R. 25, 47, 52, 78, 108, 120–121, 124), many of them were easily persuaded to purchase one or more "TVA units" (R. 26, 44, 52, 60, 66, 74, 84, 92, 102, 109, 121, 132).

Petitioner carried with him a letter signed by his son as President of The Register Publishing Company, publisher of the Huntsville Daily Register (R. 35–36). The letter introduced the petitioner as Editor and Vice President of that newspaper, described his appearance, listed his civic and church affiliations and business activities, and stated that he had been assigned "to the task of completing the Muscle Shoals series of page newspaper advertisements (20 in number) for each group of one or more counties from

the Georgia line to the Mississippi River." In some cases no use was made of this letter (R. 72, 86). In one instance, however, petitioner apparently offered it as a credential of status as a Government representative (R. 81–83); on two occasions he read excerpts from it and said or intimated that it was signed by President Roosevelt (R. 34–35, 131–133). Once, after he had represented himself as a government man, he was asked for his credentials and, instead of producing the letter, answered that he had forgotten to bring them with him (R. 113).

Although a few of the purchasers paid cash for the "TVA units" (R. 38, 44, 60, 84), most of them paid by check. The petitioner carried with him blank checks on the banks of the locality which he would produce at the appropriate time, fill in, and hand to the purchasers for their signatures; this procedure, coupled with their trust in the petitioner as a government official, led many of the purchasers to sign the checks without noticing to whom they were payable (R. 38, 52–53, 66–68, 73, 74–75, 92–93, 98–99, 100–103, 109, 121, 129, 132). At the trial it appeared that the payee of the checks in evidence was the Huntsville Daily Register (R. 37, 73, 98, 103). The checks which were introduced at the trial also bore on their face the words "For Advertising" in petitioner's handwriting, but three of the witnesses stated positively that the words had not been on the checks when they had signed them

(R. 67, 92–93, 122). And none of the Government witnesses understood at the time that they were subscribing to or buying advertising space in a privately owned newspaper (R. 33, 48, 52, 61, 68, 75–76, 85, 94, 102–104, 109, 115, 122, 126, 132).

In the closing minutes of the transactions, the customers would be furnished with receipts which were usually folded by the petitioner and not read by the purchasers until later (R. 45, 53, 60, 68, 73, 75, 84, 93, 102, 109, 122, 132). When they were finally unfolded and read by the purchasers, the receipts were found to bear the name of the Register and to indicate that the money had been paid for advertising space in that newspaper (R. 54, 60–61, 68, 73, 75–76, 93, 96, 102–104, 122, 129–130). The petitioner would depart very swiftly after receiving his money (R. 36, 53, 60–61, 65, 73, 84, 88, 93, 103, 248–249, 253), and would cash the checks promptly (R. 130, 253, 270). When some of the witnesses discovered that their receipts were for advertising, they stopped or attempted to stop payment of their checks (R. 68, 103, 129–130). One such witness learned that his check had been presented to the bank and cashed within an hour after he had signed it (R. 129–130).

The Assistant Coordinator of the TVA testified that that agency is a government corporation and that it is not a stock company and does not issue any stock or units for sale to the public (R. 89–

91). It was stipulated that petitioner was not at any time an agent, employee, or representative of the government, any department thereof, or the TVA (R. 91).

At the conclusion of all the evidence the petitioner made a motion for a directed verdict (R. 291–293). The motion was overruled (R. 293). Thereafter the trial court refused petitioner's requested instruction to the effect that the TVA is a corporate entity separate and distinct from the Government and that, therefore, if the petitioner falsely impersonated an officer or employee of the TVA, it would not constitute a violation of the statute (R. 308).

SUMMARY OF ARGUMENT

I

Petitioner contends that there was no substantial evidence that he was guilty on any of the counts and that therefore the trial court erred in denying his motion for a directed verdict. The court below overruled this contention and it is clear that there was ample evidence to go to the jury.

With respect to nine counts petitioner asserts that, in any event, the evidence showed no more than that he had impersonated an officer or employee of the TVA, and he contends that such an impersonation does not fall within the prohibition of Section 32 because the TVA is a corporation separate and distinct from the Government and its

departments. It is true that the evidence on six or, at most, nine of the counts establishes that petitioner stated that he represented "the TVA," not "the Government," but in the circumstances this was immaterial, as we show under Point II. Moreover, even if the verdict on each of those six or nine counts were invalid, the judgment would stand except as to the fines imposed on those counts. The sentence of imprisonment would be adequately supported by the verdicts on the remaining counts, which were proved by evidence that petitioner had stated that he represented "the Government."

Petitioner suggests that the evidence on all of the counts was insufficient in that it showed no colorable official act accompanying his oral representations and hence did not meet the statutory requirement that the false pretender "take upon himself to act" as the officer or employee impersonated. This point has no relevance to the seven counts charging that petitioner committed the second of the two offenses condemned by the statute, namely the obtaining of money, since the requirement above mentioned is not an element of that offense. As to the eight other counts, the point is untenable for the reason that the testimony showing petitioner's various actions in selling the "TVA units," including his preparation and handing over of checks for signature and his giving of receipts, establish that the statutory requirement was satisfied.

II

Petitioner contends that it was reversible error for the trial court to have refused his requested instruction to the effect that the TVA was not the Government or a department of it, but a corporation, and that petitioner could not have violated Section 32 by impersonating an officer or employee of the TVA.

The refusal of this instruction was correct. The conclusion stated in the instruction was unqualified and to that extent erroneous. Moreover, in view of the court's charge, including his repeated statements to the jury that petitioner, to have violated the statute, must have impersonated an officer or employee of the "Federal Government", it is arguable that the refusal of the requested instruction could not have been prejudicial. As to the counts which were proved by evidence that petitioner had said that he represented "the Government," not the TVA, and to which, therefore, the requested instruction was inapplicable, the refusal clearly could not have been prejudicial. The verdicts on those counts, as shown under Point I, were alone sufficient to support the sentence of imprisonment.

Section 32, construed in the light of its broad purpose to assure a "spirit of respect and goodwill for the Government and its officers" (*United States* v. *Barnow*, 239 U. S. 74, 78), prohibits impersonations which are calculated to create the

false impression that the offenders are officers or employees "acting under the authority of the United States, or any department", whether or not, to an accurately informed person, the offenders would appear to represent merely a government corporation or instrumentality. In the *Barnow* case, *supra*, the Court held that Section 32 was applicable notwithstanding that the office which the defendant had pretended to hold was nonexistent.

The legislative history of the 1938 amendment of Section 32 is consistent with mere uncertainty as to whether impersonating an officer or employee of a government-owned corporation was covered by the statute as it stood prior to the amendment.

III

The question raised by petitioner as to the sufficiency of the indictment is not argued in his brief and it is clear that the offenses were alleged with sufficient certainty and completeness.

ARGUMENT

I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT ON EACH OF THE COUNTS

Petitioner's principal contention is that there is no substantial evidence showing any of the offenses charged and that therefore the trial court should have granted his motion for a directed verdict. This contention is sought to be based

mainly upon the ground (Br. 12–22, 27–41) that the evidence as a whole is without probative force establishing any wrongdoing on petitioner's part and, in any event, is as consistent with innocence as with guilt. In addition, two other grounds are urged or suggested in later portions of petitioner's brief (pp. 42, 44, 58–61). These are, first, that as to nine counts there is not even a scintilla of evidence to support the conviction, since the only evidence against petitioner on those counts was that he impersonated an officer or employee of the TVA, which, even if true, did not fall within the prohibition of the statute; and secondly, that there is no evidence that petitioner performed any colorable official act, without which the statute could not have been violated.

We will discuss these grounds in turn and show that each is untenable.

A. With respect to the first of the foregoing claims, the court below recognized that the testimony of the witnesses called by petitioner conflicted with that of the Government witnesses. But it concluded that there was substantial evidence which was inconsistent with petitioner's alleged innocence and that, therefore, the case properly had gone to the jury (R. 346–347).

In view of this conclusion, it seems unlikely that this Court will entertain any further review of the probative sufficiency of the evidence, except insofar as that question may be presented by the other issues of law raised by petitioner. See *Delaney* v.

United States, 263 U. S. 586, 589–590. Should the Court do so, however, petitioner's cause would not be advanced. For the holding of the court below was clearly correct.

As appears from the Statement (*supra*, pp. 5–9), the testimony of the witnesses called by the Government is directly contrary to petitioner's claim that the record shows no more than that he was a public-spirited newspaper editor engaged in a "community advertising" campaign to the end of securing lower taxes, better roads, and cheaper electric power. And since, especially, the testimony of each closely corresponded with that of the others, it is futile for petitioner to urge that the evidence was insufficient to go to the jury.

The Government witnesses, in contradiction of those called by the defense, were in substantial agreement that, *inter alia*, petitioner had stated to them that he was representing the "Government" or, in some instances, the "TVA", and that the Government would match their contributions; that he had not explained that he was selling advertising in a private newspaper; that his references to advertising were extremely casual and incidental; and that the witnesses had been given to understand that their purchase of "TVA units" were directly related to bringing TVA electric power to their counties. Thus there was ample proof from which the jury could conclude that the purpose and effect of the petitioner's conduct and words was to pro-

duce the impression in the minds of his listeners that he was a representative of the Government seeking contributions from them in order to hasten their enjoyment of the benefits of TVA power.

That the jury was warranted in rejecting petitioner's claim of innocence becomes even clearer upon examination of the facts invoked by him as being proved by substantially undisputed evidence and as being inconsistent with his guilt. These alleged facts include (Br. 28–29) that in dealing with the persons whom he approached he exhibited the letter identifying himself as representing the Register and also exhibited copies of the Register showing community advertisements previously published; that the checks were made payable to the Register or bearer; and that he gave receipts indicating that the payments had been made for subscriptions to or advertising in the Register.

Assuming these occurrences, however, it by no means follows that the jury could not have concluded from other evidence (*supra*, pp. 5–9) that petitioner, on the occasions in question, was guilty of the false impersonations charged. Indeed, the jury would have been justified in regarding the occurrences relied on by petitioner as amounting to nothing more than a self-serving record. The type of person approached by petitioner, the effort to induce the mistaken belief that it would be advantageous to purchase the "T. V. A. units," the misleading character of the exhibition of the old copies of the Register, the creation of a situation

in which the customers would not notice to whom the checks were payable, the addition of the words "for advertising" after the checks had been signed, the folding of the receipts, the sudden departures, and the prompt cashing of the checks all combine to show a calculated imposture.

In such circumstances and in view of the language and purposes of the statute (see *infra*, pp. 25–31), it is unavailing for petitioner to contend (Br. 41) that his customers were gullible in taking him to be a representative of the Government or that they had it within their power to learn that he was not. Whether or not they should have been more intelligent or careful, the statute was violated. Cf. *Federal Trade Commission* v. *Education Society*, 302 U. S. 112, 116–117. Indeed, by its express terms it would have been violated even if petitioner's false impersonation and demands for money had been completely fruitless.

B. In Point II of his brief (pp. 42–58) petitioner, without specifying them, states that some of the counts on which he was convicted are wholly unsupported by evidence unless the false impersonation of a TVA officer or employee is a violation of the statute, which, he urges, it is not. The evidence on each count may be indicated summarily as follows:

Count Two.—Cale Witt, the alleged victim under this count, testified that, among other things, the petitioner had told him that he was selling TVA units and "that every dollar we put in this TVA

unit the Government would match it" (R. 52, 54–55).

Counts Four and Five.—Harris H. Utley, named as the victim in these counts, testified that petitioner had told him that he and Roach represented TVA and that "we" would match the amounts which the citizens of the county put up for TVA units (R. 59).

Counts Nine and Ten.—Clarence E. Luckey, the victim in these counts, testified that the petitioner stated that he was "representing the Government, trying to sell TVA units" and that he and Franklin D. Roosevelt "were boys together" (R. 108, 110).

Counts Eleven and Twelve.—J. H. Simpson, the alleged victim under these counts, testified that petitioner had told him that he was "representing the Government selling TVA," that "the Government will match dollar for dollar that you put in" (R. 73, 74, 76, 78).

Counts Fourteen and Fifteen.—The alleged victim under these counts, Frank Blackman, stated at the trial that the petitioner had told him that he was representing TVA selling TVA units and that the Government would match his contribution dollar for dollar (R. 66, 69, 71).

Counts Sixteen and Seventeen.—Dr. D. J. Conyers, the individual named in these counts, testified that petitioner had told him that he was representing TVA, selling TVA units, and that the

TVA would match any funds which the people of the community would contribute (R. 120–124).

Counts Eighteen and Nineteen.—The person allegedly defrauded under these counts was Carl Robinson. His testimony was that the petitioner had told him that "he was representing the TVA and wanted to sell me units in the TVA" (R. 84).

Counts Twenty and Twenty-One.—J. B. Cherry, the asserted victim under these counts, testified that the petitioner had told him that "he was representing the Federal Government; selling TVA units" (R. 96).

From the foregoing it appears that with respect to at least six of the fifteen counts upon which the petitioner was convicted (9, 10, 11, 12, 20, and 21) the proof showed that the petitioner had explicitly declared that he was a representative of the Government. The testimony of witnesses who were allegedly defrauded, according to three other counts (2, 14, and 15), was that the petitioner had told them that he was selling TVA units and that the Government would match their contributions. Although the testimony of the three who, according to the remaining counts (4, 5, 16, 17, 18, and 19) were victimized by the petitioner, does not reveal that he made specific mention of "the United States" or "the Government," as distinct from the TVA, we think that the total effect of their stories at the trial was that the petitioner, designedly had led them to believe that he was a

Government man. (See R. 59, 61, 84, 120–121, 124. Cf. R. 70–71.) If this be so, the verdict on these counts also is valid, since, as we will show in Point II (*infra*, pp. 22–34), the statute, properly construed, prohibits any false impersonation calculated to produce, or having the reasonably to be anticipated effect of producing the impression that the pretender is an officer or employee of the Government or of a department thereof, whether or not such an officer or employee was in fact impersonated.

Moreover, even if the Court should hold that the verdict was unsupported as to the six or even the nine counts last specified, and should modify the judgment by eliminating the fines imposed upon those counts, the sentence of imprisonment would not be affected. For each of the three groups into which the trial court divided the counts for purposes of the sentence of imprisonment contain two of the six counts (9, 10, 11, 12, 20, 21) upon which the verdict would remain valid.[3] Where a sentence is supported by a valid

[3] The first sentence of three years' imprisonment was imposed upon counts 2, 4, 5, 9 and 10 (R. 13). Of these counts, Nos. 9 and 10 are clearly proved by evidence that petitioner claimed to be representing "the Government." The next sentence of three years' imprisonment was imposed on counts 11, 12, 14, 15, and 16 (R. 13). Of these, Nos. 11 and 12 are similarly established. The remaining sentence, which was for two years, was imposed on counts 17, 18, 19, 20, and 21 (R. 13). Of these, Nos. 20 and 21 likewise were proved by direct evidence. Thus, the entire sentence of eight years' imprisonment would remain valid.

verdict of guilty upon any one of a number of counts, it is to be upheld notwithstanding that the verdict on the other counts was erroneous. *Claassen* v. *United States*, 142 U. S. 140; *Evans* v. *United States*, 153 U. S. 584, 608.

C. In Point III of his brief (pp. 58–61) the petitioner apparently argues, in substance, that the evidence goes no further than to show oral impersonation unaccompanied by any colorable official act and that, consequently, it failed to establish an offense under the language of the statute requiring that the offender "shall take upon himself to act" as an officer or employee of the United States or any department thereof. Whatever its merits, this contention relates only to counts 2, 4, 9, 11, 14, 16, 18 and 20, since only those rest upon the provision of the statute requiring that the offender "take upon himself to act" in a false capacity. The seven other counts charge the second of the two offenses defined by the statute, namely, the obtaining of money. See *United States* v. *Barnow*, 239 U. S. 74, 75.

Furthermore, the contention is without merit even as to the counts to which it relates. The Circuit Court of Appeals at the time of the first appeal disposed of the contention with the observation that "no logical reason is suggested why verbal declarations may not constitute a false pretending or impersonation equally with the exhibition of a counterfeited badge or a false certificate of authority." 86 F. (2d) 949, 951. Petitioner again

stresses the fact that he did not exhibit a badge of office (R. 60–61). However, neither the statute nor any decision under it makes such an exhibition an essential element of the offense. The decisions of this Court in *United States* v. *Barnow*, *supra*, and *Lamar* v. *United States*, 241 U. S. 103, recognize only that the statutory provision requires something more than a false oral representation. In the instant case there is much more. The petitioner, in addition to stating that he was a representative of the Government, or of the TVA, went through an elaborate performance consisting of exhibiting the old copies of the Register, producing the blank checks, and filling them in, accepting payment, and folding the receipts and handing them to his customers, all of which was designed to insure the success of his scheme. There can be no doubt that this performance satisfies the requirement of the statute that he "take upon himself to act" in the false capacity.

II

THE TRIAL COURT PROPERLY REFUSED THE INSTRUCTION REQUESTED BY THE PETITIONER

On the first appeal in this case the petitioner attacked the sufficiency of the indictment under Section 32 on the ground that he was accused of having pretended to be a representative of the TVA, and that the TVA was a corporate entity, separate and distinct from the Government of the United States. Although the Circuit Court

reversed the conviction on other grounds, it specifically rejected this contention. Referring to the words in the indictment, "did * * * falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling TVA Units," the Court remarked: "The allegations of the indictment are broader than the contention implies, and to the allegations the proofs respond. The defendants were not charged with representing themselves as agents or employees of the Tennessee Valley Authority. They are charged with having assumed or pretended to be representatives of the government" (86 F. (2d) 949, at 951). Thus, there was no occasion to consider the question whether the impersonation of an employee or officer of the TVA might come within the prohibition of the statute.

At the conclusion of the third trial, the petitioner requested the court to instruct the jury as follows (R. 308):

> At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is a corporate entity, a [sic] separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defend-

> ant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment.

The petitioner contends (Br. 42–53) that the denial of this request was prejudicial error requiring reversal. He argues that an officer or employee of the TVA or any other government corporation is not an officer or employee of the United States or any department thereof, and that therefore, as a matter of law, if he impersonated such an officer or employee, he did not violate Section 32 as it stood prior to the amendment of 1938. We will show that this argument is unsound and hence that the requested instruction properly was refused. The propriety of the refusal seems particularly clear because the requested instruction contained no qualification that if petitioner, in stating that he represented the TVA, meant to convey and did convey the impression that he was an officer or employee of the Government, he could be convicted.

Of course, for reasons already indicated (*supra*, pp. 19–21), petitioner's argument, even if correct,

would not result in a reversal or modification of the sentence of imprisonment, but would at most reach only the fines on the six or nine counts as to which the proof was that petitioner had stated that he was a representative of the TVA, rather than of the Government. With respect to the remaining counts, petitioner could not have been prejudiced by the denial of the requested instruction. Moreover, even as to the others, it might be argued that there was no prejudice in view of what the trial court did charge.[4]

Our more important contention, however, is that Section 32 should be construed in the light of its evident purpose and of the broad scope hitherto accorded it; and that, so construed, it prohibits false impersonations which are calculated to mislead people into believing that the offenders are, in the words of the statute, officers or employees "acting under the authority of the United States, or any department," or which reasonably would be expected to have that effect, whether or not to an accurately informed individual the offender would appear merely as a representative of a government corporation or independent agency.

Section 32 was originally enacted in 1884. 23

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[4] The court twice read the statute (R. 295, 299–300) and repeatedly cautioned the jury not to find petitioner guilty unless the evidence established beyond a reasonable doubt that he had impersonated an officer or employee of the "United States" or "Federal Government" (R. 300, 301, 302, 303, 304, 305, 306).

Stat. 11. It was a remedial statute, designed to put an end to frauds upon Civil War pension claimants. 15 Cong. Rec. 2256, 2627. The number and variety of frauds of this kind were the source of considerable anxiety at the time. Oberholtzer, *A History of the United States since the Civil War*, Vol. IV, p. 354. There can be little doubt but that the Congress meant the prohibition to be broadly construed to prevent the defeat of its policy by any scheme devised by the nimble wits of schemers. What was true of the pension frauds is true of all such devices today; they are as various in their conception and execution as cunning permits. "It was not possible for congress in enacting the statute [Section 32] to anticipate all the devices and schemes which human knavery might conceive * * *." *United States* v. *Ballard*, 118 Fed. 757, 759 (W. D. Mo. 1902). See *Littell* v. *United States*, 169 Fed. 620 (C. C. A. 9th 1909).

This necessity for according the Section an ample scope is accentuated by the consistent recognition by the courts that its purpose is broader than the mere protection of the credulous. The mischief of the schemes at which the statute is directed lies in the false confidence inspired in the mind of the victim by the impression that the offender is a representative of the Government. But the creation of this impression, determinative as it is of the success of the scheme, is fraught with an evil greater than the immediate fraud, for

its inevitable consequence is to undermine the reputation of the Government and its representatives for honesty and fair dealing. The preservation of public confidence in the Government and its representatives, as this Court has indicated, is the wider and more significant objective of the statute. *United States* v. *Barnow*, 239 U. S. 74, 78.

In this most significant purpose of the Section the key to its proper construction is to be found. For it is plain that the impairment of popular faith in the Government hinges upon the success enjoyed by the perpetrator of the scheme in inducing his victim to believe that he is a Federal official. The test of whether a particular scheme falls within the ambit of the statute is the test of public understanding. That is to say, the question to be asked in each case is whether the conduct and representations of the defendant have been of a kind reasonably calculated to produce the impression in the minds of plain people that he is a "Government man." And, as the Circuit Court of Appeals observed at the time of petitioner's first appeal, in the application of this test, it should be unnecessary to determine that even persons of quick perception and intelligence would likely have been deceived. 86 F. (2d) 949, 952.

These considerations seem to us to point with certainty to the solution of the problem raised by the instant case. The government corporation represents one of the most significant and fre-

quently utilized innovations in the statecraft of our time.[5] The only genuine question raised by this development in connection with Section 32 is whether the government corporation is generally regarded by ordinary men as a part of the government itself. This is not a question for the lawyer;[6] it is an empirical question, and its answer is clear. The TVA, in particular, is regarded as a "public" or "government" enterprise by people generally, and especially by the inhabitants of the region in

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[5] See Stoke, *Some Aspects of the Legal Status of Federal Corporations*, 27 Geo. L. J. 1 (1938); Pinney, *The Legal Status of Federal Government Corporations*, 27 Col. L. Rev. 712 (1939); Lilienthal and Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 Harv. L. Rev. 545 (1941).

[6] Legal questions concerning the relationship of a Government corporation to the Government have received varying answers by the courts. These answers have depended upon the particular statute or circumstances under which an amalgamation or a distinction has been urged. Thus, the Fleet Corporation has been considered a department of the Government within the meaning of the Post Roads Act (14 Stat. 221; U. S. C., Title 47, Section 3). *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415. Cf. *United States Grain Corp.* v. *Phillips*, 261 U. S. 106, 111, 113–114; *United States* v. *Walter*, 263 U. S. 15; *Callam County* v. *United States*, 263 U. S. 341; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 97 F. (2d) 812 (C. C. A. 8); *Langer* v. *United States*, 76 F. (2d) 817 (C. C. A. 8th). But for other purposes or under other statutes, the same Corporation is regarded as separate and distinct from the Government. See *United States* v. *Strang*, 254 U. S. 491; *United States ex. rel. Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1; *United States* v. *Skinner & Eddy Corp.*, 28 F. (2d) 373 (W. D. Wash.).

which its influence is most immediate and real (See R. 70–71, 78). Whatever its objectives may be, they have not been confused in the public mind with those of a private enterprise.

This being true, it may hardly be doubted that activities of the kind here proved seriously impair the trust in the United States held by the citizens of Tennessee, and threaten in equal measure the success of the public effort embodied in the TVA. Indeed, the TVA, more than most governmental programs, depends upon the confidence which it inspires in the minds of the inhabitants of the territory which it seeks to serve.

An *a fortiori* decision in point is that of this Court in *United States* v. *Barnow,* 239 U. S. 74. The indictment there alleged that the defendant had falsely pretended to be an employee of the United States, to wit, an agent employed by the Government to sell a certain set of books entitled "Messages and Papers of Presidents." A demurrer to the indictment was sustained below on the theory that Section 32 was applicable only to persons who pretended to hold official positions that actually existed, and that there was no such office as that which the defendant allegedly pretended to hold. However, this Court reversed the judgment, holding that the Section should be accorded "a broader reach," and that it should be deemed no less an offense that "the assumption or pretense is entirely false" (239 U. S. 76, 77). See also *Lamar* v. *United States,* 241 U. S. 103,

114–116; *Elliott* v. *Hudspeth*, 110 F. (2d) 389 (C. C. A. 10th). Surely the TVA is not now to be regarded as any less closely identified with the Government for purposes of Section 32 than was the nonexistent office involved in the *Barnow* case.

Another applicable decision of this Court is that in *United States* v. *Walter*, 263 U. S. 15, 18. One count of the indictment there involved charged that the defendant had violated Section 37 of the Criminal Code, punishing conspiracies "to defraud the United States in any manner," in that he had conspired to obtain the payment of fraudulent claims against the United States Emergency Fleet Corporation. The defendant's demurrer on the ground, *inter alia*, that the fraud alleged was not a fraud upon the United States, was sustained by the district court. However, this Court reversed the judgment. Citing the *Barnow* case, the Court said (at page 18, per Mr. Justice Holmes):

> As to the third count, while it is true that the corporation is not the United States, *United States* v. *Strang*, 254 U. S. 491, the contemplated fraud upon the corporation if successful would have resulted directly in a pecuniary loss to the United States, and even more immediately would have impaired the efficiency of its very important instrument. We are of opinion that it was within the words of § 37, "defraud the United States in any manner," and that on this as on the other point the decision below was wrong. *Haas* v. *Henkel*, 216 U. S.

479, 480. *United States* v. *Barnow*, 239 U. S. 74, 79.

By like reasoning, in the instant case the false representations of petitioner could not but impair the "spirit of respect and good-will for the Government and its officers" which Section 32 was designed to protect. *United States* v. *Barnow*, *supra*, 78.

In *United States* v. *Strang*, 254 U. S. 491, the Court held that an inspector employed by the United States Shipping Board Emergency Fleet Corporation was not an "agent of the United States" within the meaning of Section 41 of the Criminal Code, prohibiting persons from acting as such agents in the transaction of business with firms in which they are members or financially interested. However, the purposes and language of Section 32 are broader than those of Section 41, and, as is clear from the passage above quoted, the decision in the *Strang* case was held inapplicable in the *Walter* case. See also *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, and other cases cited in footnote 6, *supra*, p. 28.

The petitioner emphasizes the fact that in 1938, three years after the date of the acts charged in the indictment, Congress amended Section 32 in such a way as to make explicit its application to impersonations of officers or employees of corporations owned in whole or in part by the Federal Government.

The addition of these references to government corporations, it is argued, reveals a Congressional belief in 1938 that the Congress which enacted the original statute in 1884 intended to exclude from its scope the impersonation of an officer or employee of a government corporation. However, the circumstances surrounding the adoption of the 1938 amendment makes this contention seem somewhat artificial.

Early in 1938, as the result of discussions with officials of the Reconstruction Finance Corporation, the Department of Justice prepared a draft of two proposed amendments to Section 32, including the one later adopted, and submitted the draft to the Speaker of the House and to the Senate Committee on the Judiciary. In the letters transmitting the proposed amendments Acting Attorney General Keenan, stated: "It seems desirable to extend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations." He also recommended that the maximum penalty be raised from three years' imprisonment and a fine of $1,000 to five years' imprisonment and a fine of $5,000. Congressional consideration of the proposals was perfunctory. The bill was introduced in the Senate, referred to the Committee on Judiciary, and reported back without amendment. The Report (S. Rep. No. 823) contained little more than the letter from the Acting Attorney

General. Senator Hatch, when asked to explain the bill, replied: "The letter from the Attorney General which accompanies the report is short and explains the purpose of the proposed legislation. * * * This bill extends the existing law to employees of a Government-owned corporation. That, in brief, is the purpose of the bill." 81 Cong. Rec. 8378. Following this terse explanation, the measure was adopted by the Senate without discussion. *Ibid.*

Thereafter the House passed the bill with an amendment restoring the existing penalties. 83 Cong. Rec. 2252. On the following day the Senate concurred in the House amendment. 83 Cong. Rec. 2264–2265. No discussion was had on either floor and the report of the House Committee on the Judiciary (H. Rept. No. 1763) merely expresses concurrence with the recommendation of the (Acting) Attorney General.

We think that this history of the 1938 amendment is as consistent with uncertainty regarding the scope of Section 32 as it is with any belief that cases such as the instant were not covered. It would be unreal to ascribe to Congress any intent with respect to the 1938 amendment other than the doubt entertained by officials of the Department of Justice. The virtually automatic congressional approval of the bill as drafted by the Department can hardly be said in any real sense to suggest a congressional view as of 1938 that in 1884, when Section 32 was

originally enacted, the Congress intended to exclude from its scope either government corporations in particular or new instruments for the effectuation of governmental purposes generally. The history of the 1938 amendment consequently reveals nothing more than an attempt by an administrative agency to clarify the mandate of the statute.

III

THE INDICTMENT DESCRIBED THE OFFENSES WITH SUFFICIENT CERTAINTY

The indictment (R. 1–14) charges that on or about certain dates the petitioner and Roach with intent to defraud named individuals falsely assumed and pretended "to be officers of the United States, to wit, representatives of the Government selling TVA Units," and, in seven counts, that he obtained specified sums of money from the individuals named. The petitioner has raised, but not argued, the question whether these, together with the other averments, sufficiently describe the offense denounced by either clause of Section 32. That they do is not open to doubt, and petitioner does not now press his contention to the contrary. See *Lamar* v. *United States*, 241 U. S. 103, 116; *Garrison* v. *Hudspeth*, 108 F. (2d) 733 (C. C. A. 10); *King* v. *United States*, 279 Fed. 103 (C. C. A. 5); *Heskett* v. *United States*, 58 F. (2d) 897 (C. C. A. 9), certiorari denied, 287 U. S. 643.

CONCLUSION

For the reasons set out above, it is respectfully submitted that the petitioner was properly convicted and that the decision below should be affirmed.

CHARLES FAHY,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
OSCAR PROVOST,
Special Assistant to the Attorney General.
H. G. INGRAHAM,
Attorney.

OCTOBER 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

SUPREME COURT OF THE UNITED STATES.

No. 36.—October Term, 1941.

J. E. Pierce, Petitioner,
vs.
The United States of America.
} On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[December 8, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

Petitioner was convicted under an indictment charging violation of Section 32 of the Criminal Code. At the time of the alleged offense it read as follows:

"Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both." 35 Stat. 1095; 18 U. S. C. § 76.

The conviction was affirmed, 115 F. 2d 399, and certiorari granted, 313 U. S. 552, on account of petitioner's heretofore undecided contention of manifest error in the trial court's refusal of an instruction that the statute did not include within its scope false personation of officers or employees of a government corporation, i. e., the Tennessee Valley Authority (TVA).

The section has been upon the statute books since April 18, 1884. 23 Stat. 11. It was passed because of reports to Congress by the Pension Office of fraudulent practices affecting pension claimants. There is nothing in the legislative history which throws any light on the problem posed.[1] Nor do we find any fruitful comments in the various reports preliminary to the enactment of the Criminal Code which adopted the original language without

[1] 15 Cong. Rec. 1285, 2256, 2627, 2676, 48th Cong., 1st Sess.

significant change.[2] Subsequently to the acts forming the basis of the respective counts of the indictment, the section was amended to include pretending to be an officer or employee "of any corporation owned or controlled by the United States." Feb. 28, 1938, c. 37, 52 Stat. 82.

The counts of the indictment which were submitted to the jury charged the defendant with falsely pretending to be an officer "of the United States, to wit, [a representative] of the Government selling T.V.A. Units" then and there taking upon himself to act as such officer with intent to defraud separate individuals named in the counts or with obtaining from the named individuals stated sums of money with intent to defraud. The indictment states crimes under the statute.

On the trial it was stipulated that petitioner was not at any time an agent, employee or representative of the Government or any department thereof or of the TVA. It was shown that TVA was a government corporation and that it issued no stock or units for sale. The evidence further showed petitioner was editor and vice president of a newspaper, the Huntsville (Alabama) Daily Register, and that the representations occurred during "a community publicity advertising" campaign. He carried a letter from his paper introducing and identifying him as engaged in getting out "the Muscle Shoals series of page newspaper advertisements," and carried a bundle of the old issues of the paper as demonstrations of the publicity assistance to be given the TVA. The TVA units were participations in the cost of the page advertisements in the Daily Register, telling of the TVA benefits to the community, which cost the victims of the alleged swindle $10 each. Those who purchased by cash or check received on the spot receipts of the Daily Register signed by petitioner for the advertising cost paid. The wide publicity obtained from the construction of the TVA flood and power project had prepared the way for easy acceptance of the scheme by the credulous. Some subscribers to the units who felt they had been duped by the salesman testified to the circumstances of their fleecing on the occasions specified in the indictment. Their evidence showed to the satisfaction of the

[2] Report of the Special Joint Committee on Revision of the Laws, Sen. Rep. No. 10, 60th Cong., 1st Sess., Part 1, p. 40; Final Report of the Commission to Revise and Codify the Laws of the United States, Vol. 1, p. 101, Vol. 2, p. 1776 (1906); Report of the Commission to Revise and Codify the Criminal Laws of the United States, Sen. Doc. No. 68, 57th Cong., 1st Sess., Part 2, pp. IX and 12, Sec. 37.

jury that Pierce, taking upon himself to act as a government employee, said or gave them the impression that he represented the Government, that the Government was contributing to the cost of the advertising for the development of TVA and that, as one witness phrased it, the purpose was "Just the advancement of TVA in our country." Another witness testified "It never dawned on me that it was a personally owned newspaper."

All the counts included a charge of impersonation of a representative of the United States "selling TVA units." The evidence as to some was that Pierce said he represented TVA; as to others it was that he represented the Government selling TVA or TVA units. In no instance is there testimony that Pierce represented himself as an employee or officer of the United States unconnected with the public enterprise of the TVA at Muscle Shoals. The instructions followed the charges and evidence. They made clear that the charges against Pierce were for false impersonation by assuming to act as an officer or employee of the United States with fraudulent intent and not simply for obtaining money by false pretenses or false claim of stimulating the Tennessee Valley development. The instructions repeated with many variations the thought that Pierce must have actually and intentionally represented himself or assumed to be an officer of the United States, acting under its authority. References were made to TVA. It was said defendant was selling or attempting to sell TVA units. It was further pointed out that the mention of TVA in the copies of the Daily Register which were exhibited "by the defendant to any person, from whom funds were solicited, and in the sales talks made by him, to such person should not be considered by you as evidence of a false claim or pretense of Federal Authority on the part of the defendant, Pierce, unless you further find and are satisfied from the proof, beyond a reasonable doubt, that such reference to TVA, in either the newspapers or sales talks, were made by the defendant with the intent of producing a belief on the part of the person from whom funds were solicited that he, the defendant Pierce, was acting as an officer or employee of the Federal Government."

There was a refusal by the trial court, however, to give the following instruction:

"At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is

a corporate entity, a separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment."

Nor do we find any comparable statement which was given. In this refusal we find material error.

So closely entwined were the TVA and the Government (The United States) in the instructions and the evidence on the various counts that any jury might well have thought a pretense that Pierce was an employee or officer of the TVA violated the statute and have voted for conviction for that reason. This, however, in our view, is incorrect, and constitutes prejudicial error. Cf. *Warszower* v. *United States*, 312 U. S. 342; *Stromberg* v. *California*, 283 U. S. 359; *Nash* v. *United States*, 229 U. S. 373. The statute in effect at the time of the commission of the alleged offenses did not speak of pretenses of acting under authority of corporations owned or controlled by the United States. It was passed in 1884 before the United States owned or controlled corporations operating hotels, boat lines or generating plants. The amendments, subsequent to the occasions fixed by the indictment, extended its scope first to the Home Owners' Loan Corporation, 49 Stat. 298, and later to all corporations owned or controlled by the United States, 52 Stat. 82.[3] These legislative extensions of the scope of the act were in accord with the growing importance of the administrative corporation, but a comparable judicial enlargement of a criminal act by interpre-

[3] The reports of the Judiciary Committee of the Senate and of the House of Representatives bear upon their view of the proper interpretation of the act in its original form. The reports incorporated the following letter:

"OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 7, 1937.

HON. WILLIAM B. BANKHEAD,
The Speaker, House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: The existing law makes it a crime to impersonate any officer or employee of the United States with intent to defraud (Criminal Code, sec. 32; U. S. Code, title 18, sec. 76). It seems desirable to ex-

tation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness. Cf. *Lanzetta* v. *New Jersey*, 306 U. S. 451 and cases cited. While the act should be interpreted "so as . . . to give full effect to its plain terms," *Lamar* v. *United States*, 241 U. S. 103, 112; *United States* v. *Barnow*, 239 U. S. 74, we should not depart from its words and context. Another section of the Criminal Code (§ 35) was amended to meet the new development by the Act of October 23, 1918, 40 Stat. 1015. Cf. *United States* v. *Strang*, 254 U. S. 491. The TVA Act made certain federal penal statutes applicable to the Authority but pointedly omitted Section 32.[4] This pointed omission is indicative of intention.

Previous cases as to identity between the Government and its corporations turned on considerations not here applicable. In *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 426, the Corporation was held a department of the Government within the meaning of the Post Roads Act and so entitled to lower telegraph rates than private corporations. An indictment under Criminal Code Section 37 for a conspiracy to defraud the United States "in any manner"

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tend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations.

The maximum penalty that may now be imposed for the offense of impersonation is imprisonment for a term of 3 years and a fine of $1,000. In aggravated cases a greater punishment may prove suitable, and I suggest increasing the maximum penalty to imprisonment for 5 years and a fine of $5,000.

A bill to effectuate this purpose is submitted herewith.

Sincerely yours,

JOSEPH B. KEENAN,
Acting Attorney General."

H. Rep. No. 1763, 75th Cong., 3d Sess.; S. Rep. No. 823, 75th Cong., 1st Sess.

[4] May 18, 1933, c. 32, § 21, 48 Stat. 68:

"(a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the Corporation and to moneys and properties of the United States intrusted to the Corporation.

(b) Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both."

was held to state a crime when the contemplated fraud was upon the United States Emergency Fleet Corporation. *United States* v. *Walter*, 263 U. S. 15, 17. But this decision is bottomed on the broad ground that fraud which interferes with the successful operation of the Government is within the statute. *Haas* v. *Henkel*, 216 U. S. 462, 479, 480. On the other hand, in *United States* v. *Strang*, *supra*, in construing Criminal Code Section 41[5] this Court held an employee of the Fleet Corporation was not an agent of the United States within the true intendment of the section. The *Strang* case had the approval of the Court in the opinion deciding the *Walter* case. The statute in the *Strang* case points directly at a particular class of persons as the object of the sanction. It leaves, as does the statute here, no room for enlargement of its meaning.

Reversed.

Mr. Justice DOUGLAS dissents on the ground that a false representation by the defendant that he was acting for the Tennessee Valley Authority constituted a false pretense that he was an officer or employee acting under the authority of the United States or a department thereof, within the meaning of § 32 of the Criminal Code.

Mr. Justice BLACK and Mr. Justice JACKSON took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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5 "Sec. 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years." 35 Stat. 1095; 18 U. S. C. § 93.